

**MINUTES FOR THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

December 23, 2002

DIVISION ONE

B153066 People (Not for Publication)
v.
Holguin

The judgment is reversed insofar as strike allegation is concerned, and the cause is remanded to the trial court with directions to resentence Holguin; in all other respects, the judgment is affirmed.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.
Mallano, J.

B157136 Los Angeles County, D.C.S. (Not for Publication)
v.
Manuel A.

The adjudication and dispositional orders are affirmed.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.
Ortega, J.

B154333 People (Not for Publication)
v.
Dotson

The judgment is affirmed.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.
Mallano, J.

December 23, 2002 (Continued)

DIVISION ONE (Continued)

B156049 Alexander (Certified for Publication)
v.
Union Rescue Mission

The order is reversed and the cause is remanded to the trial court with directions to grant the petition for the probate of Cleopatra Eugene's will.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.
Ortega, J.

DIVISION THREE

B153598 People (Not for Publication)
v.
Sartin

The judgment is affirmed.

Klein, P.J.

We concur: Croskey, J.
 Kitching, J.

B158458 Los Angeles County, D.C.S. (Not for Publication)
v.
Victor S. and Micaela A.

The order terminating Mother and Father's parental rights as to Noe, Armando, Vicky and Evelyn is affirmed.

Klein, P.J.

We concur: Kitching, J.
 Aldrich, J.

DIVISION ONE (Continued)

B156216 Powerine Oil Company, Inc. (Certified for Publication)

v.

Superior Court, Los Angeles County

(Central National Insurance Company, etc., et al., r.p.i.)

The order to show cause is discharged. A peremptory writ of mandate shall issue directing the trial court to vacate its order of January 7, 2002, granting Central National's motion for summary adjudication of their duty to Indemnify Powerine and to issue a new order denying said motion. Powerine shall recover its costs in this writ proceeding.

Aldrich, J.

We concur: Klein, P.J.
 Kitching, J.

DIVISION FOUR

Court convened at 9:00 A.M.

Present: Vogel (C.S.), P.J., Epstein, J., Hastings, J., Curry, J. and S. Veverka, Deputy Clerk.

Each of the following:

B155671 People v. Thomas et al.
B156076 People v. Godoy et al.
B156593 People v. Rasar et al.
B156417 People v. Chamberlain
B158444 DCFS v. Thomas P., Jr.
B158219 DCFS v. Yolanda L.
B135346 People v. Green
B153469 People v. Purry
B155845 People v. Landaverde
B157828 DCFS v. Yolanda M., et al.
B155467 DCFS v. Steve L.
B142711 People v. Dile

Argument waived, cause submitted.

DIVISION FOUR (Continued)

Merits:
Argued by Jerald W. Newton for appellant and by Roy C. Preminger for respondent. Cause submitted.

Merits:
Appearance by Tali Shaddow for respondent. Counsel for appellant waived oral argument. Cause submitted.

B142711	People v. Dile	(Not for Publication)
B161238	In re Dile on Habeas Corpus	

Curry, J.

We concur: Vogel (C.S.), P.J.
Hastings, J.

The jurisdictional and dispositional orders are reversed.

Epstein, J.

We concur: Vogel (C.S.), P.J.
Curry, J.

DIVISION FOUR (Continued)

B158219 Los Angeles County, D.C.S. (Not for Publication)
v.
Yolanda L.

The order of guardianship is affirmed.

Curry, J.

We concur: Epstein, Acting P.J.
 Hastings, J.

B159994 People (Not for Publication)
v.
Ziegler

The matter is remanded for the limited purpose of an exercise of discretion with regard to five one-year enhancements (Pen. Code, 667.5, subd. (b)), and in all other respects the judgment is affirmed.

Epstein, Acting P.J.

We concur: Hastings, J.
 Curry, J.

DIVISION FIVE

B153406 Harold Grantham, et al. (Not for Publication)
v.
Board of Administration of California State Teachers' Retirement System

The judgment is affirmed. Respondent(s) to recover costs.

Grignon, Acting P.J.

We concur: Armstrong, J.
 Mosk, J.

DIVISION FIVE (Continued)

B147753 Leon Jenkins, et al. (Not for Publication)
 v.
 John Niemier

The judgment is affirmed. Respondent(s) to recover costs.

Armstrong, J.

We concur: Turner, P.J.
 Mosk, J.

B155681 Dalian Vastone Enterprise Development Co., LTD. (Not for Publication)
 v.
 Boris Czkadua, et al.

The judgment is affirmed. Respondent(s) to recover costs.

Armstrong, J.

We concur: Grignon, Acting P.J.
 Mosk, J.

B157146 People (Not for Publication)
 v.
 Norris

The sentence is reversed. The four Penal Code section 667.5 prior prison term enhancements are reversed. Upon issuance of the remittitur, the court is to conduct a limited retrial on the issue of the validity of the allegations that defendant had previously served Penal Code section 667.5 prior prison terms. The trial court is to consider whether to dismiss an of defendant's prior violent or serious felony convictions pursuant to Penal Code section 1385, subdivision (a) within the discretionary confines permitted by People v. Williams (1998) 17 Cal.4th 148, 161-165 and its progeny. In resentencing defendant, the sentence under count 2 is to be stayed pursuant to Penal Code section 654, subdivision (a). The judgment is affirmed in all other respects.

Turner, P.J.

We concur: Armstrong, J.
 Mosk, J.

December 23, 2002 (Continued)

DIVISION SIX

B155869 People (Not for Publication)
v.
Pilon

The judgment and sentence are affirmed.

Gilbert, P.J.

We concur: Yegan, J.
Coffee, J.

B149009 People (Certified for Publication)
v.
Pierce

The judgment is affirmed.

Gilbert, P.J.

We concur: Coffee, J.
Perren, J.

[illegible]

The judgment is modified to strike one of the one-year prior prison term enhancements under section 667.5, subdivision (b). The superior court shall prepare an amended abstract of judgment and shall forward a copy to the Department of Corrections. The judgment is otherwise affirmed.

Coffee, J.

We concur: Gilbert, P.J.
Perren, J.

DIVISION SIX (Continued)

We concur: Gilbert, P.J.
Perren, J.

Yegan, J.

We concur: Gilbert, P.J.
 Coffee, J.

Coffee, J.

We concur: Gilbert, P.J.
Yegan, J.

Filed order granting petition for rehearing.

December 23, 2002 (Continued)

DIVISION SIX (Continued)

B154784 Kafader, et al.
v.
USAA Casualty Insurance Company

Filed order denying petition for rehearing.

DIVISION SEVEN

B150994 Linger (Not for Publication)
v.
Longs Drug Stores, et al.

The judgment is affirmed. Respondent(s) to recover costs.

Perluss, J.

We concur: Johnson, Acting P.J.
 Woods, J.

B153483 People (Not for Publication)
v.
Wizar

The judgment is affirmed.

Perluss, J.

We concur: Johnson, Acting P.J.
 Woods, J.

B157682 People (Not for Publication)
v.
Vasquez

The judgment is affirmed.

Perluss, J.

We concur: Johnson, Acting P.J.
 Woods, J.

DIVISION SEVEN (Continued)

B151655 Loline Hathaway, et al. (Not for Publication)
v.
Freda Nadine Hathaway

The judgment is affirmed. Respondent(s) to recover costs.

Perluss, J.

We concur: Johnson, Acting P.J.
 Woods, J.

B148398 Venegas (Certified for Partial Publication)
v.
County of Los Angeles

The judgment of nonsuit on counts one and four is reversed. On remand the trial court is also directed to vacate its orders sustaining respondents' demurrers to counts six (battery) and eight (violation of Civil Code section 52.1) and to enter new orders overruling the demurrers to counts six and eight; the trial court is further directed to vacate its order sustaining respondents' demurrers to count nine (negligence) asserted by David Venegas and to enter new orders overruling the demurrers to count nine as to David Venegas; the trial court is further directed to vacate its order sustaining the demurrers of Baca and Sheriff's Department to count one and to enter a new order overruling their demurrers to count one. The orders granting summary adjudication of count ten in favor of City of Vernon and Wiles, and sustaining without leave to amend County respondents' demurrer to count ten, are affirmed. The order sustaining without leave to amend City of Vernon's demurrer to count nine of Beatriz and Vincent Venegas is affirmed. Appellants are entitled to costs on appeal.

Munoz, J. (Assigned)

We concur: Johnson, Acting P.J.
 Perluss, J.

December 23, 2002 (Continued)

DIVISION SEVEN (Continued)

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The judgment is modified by deleting the lab fee of \$150 and instead imposing a \$50 laboratory analysis fee pursuant to Health and Safety Code section 11372.5, a \$50 penalty assessment pursuant to Penal Code section 1464, and a \$35 penalty assessment pursuant to Government Code section 76000. As modified, the judgment is affirmed. The trial court shall prepare an amended abstract of judgment showing the modifications and shall forward a certified copy of the same to the Department of Corrections.

Munoz, J. (Assigned)

We concur: Johnson, Acting P.J.
Perluss, J.

DIVISION EIGHT

B155942 People (Not for Publication)
v.
Ventura

The judgment is modified by awarding appellant 406 days of actual presentence custody credit. In all other respects, the judgment is affirmed.

Boland, J.

We concur: Cooper, P.J.
Rubin, J.

B156322 Los Angeles County, D.C.S. (Not for Publication)
v.
Victor A. and Andrea R.

The order of the juvenile court is affirmed.

Cooper, P.J.

We concur: Rubin, J.
Boland, J.

DIVISION EIGHT (Continued)

B163270 Butler, et al. (Certified for Publication)

v.
Superior Court, Los Angeles County
(Terry, r.p.i.)

We have followed the procedures and given the notice described in *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, at pages 177-183. No factual issues are disputed, the legal error is clear, and the matter should be expedited. Thus, a peremptory writ in the first instance is appropriate. (Code Civ. Proc., § 1088; *Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1222-1223; *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35.) The petition is granted. Let a peremptory writ of mandate issue ordering the trial court to (1) vacate its order of October 18, 2002, granting reconsideration, (2) issue a new order denying the motion, and (3) comply with our remand directions in Case No. B147001.² Butler and Nero are awarded their costs.

Rubin, J.

We concur: Cooper, P.J.
Boland, J.

B153368 Shirley Raven-Moore (Not for Publication)

v.
Los Angeles County Metropolitan Transportation Authority

The judgment of dismissal is reversed, with directions to the trial court to permit appellant to file a third amended complaint. Appellant to recover costs on appeal.

Cooper, P.J.

We concur: Rubin, J.
Boland, J.